Supreme Court, U.S.
FILED

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In The
SUPREME COURT OF THE UNITED STATES,
WASHINGTON, D.C. 20543
OCTOBER 1997 TERM

BEN. GYADU,
Petitioner

- vs -

WORKERS' COMPENSATION COMMISSION, ET AL

Respondents

A PETITION FOR A WRIT OF CERTIORARI
FROM THE U.S. COURT OF APPEALS, NEW YORK, NEW YORK

PETITION FOR WRIT OF CERTIORARI

BEN. GYADU, Pro Se
P.O. Box 4314
Waterbury, CT 06704

36 pp

Ref.: Supreme Court of U.S. Date: February 13, 1998
Washington, DC 20543

QUESTIONS FOR REVIEW

1. Does the defendant, Workers Compensation Commission, violate Plaintiff's established federal statutory and constitutional rights when it ignores its own laws, fails to enforce the provisions of the laws of the system, breaks laws of the system to achieve a goal sought, handles plaintiff's claim for benefits by arbitrary and capricious means so as to deprive Plaintiff of benefits due him?

2. Does a Workers' Compensation Commissioner, Commissioner Mastropietro, defendant, after plaintiff, due to his condition, decided not to accept the Commission's offer to settle his case, abuse his office and violate plaintiff's established federal statutory and constitutional rights when in an effort to make it compelling for plaintiff to settle his case for any amount of money which the Commission and the carrier were willing to offer the plaintiff to get him off the system at a time he does not have a job because of his injury, does not have any health insurance, but has permanent health

problems because of his injury, does not have any income and so critically needs the assistance of the Commission, in his efforts to get back on his feet, the Commissioner, Commissioner Mastropietro, decides to manipulate plaintiff's weekly income so as to place financial hardships upon plaintiff as a means by which plaintiff would opt to settle his case?

3. Does a Workers' Compensation Commissioner, Commissioner Mastropietro, defendant, violate plaintiff's established federal statutory and constitutional rights under (a) Due Process - 42 U.S.C. Section 1983 (b) Equal Protection - U.S. Const. Amend. XIV, Section 1 (c) Equal Benefit Of The Laws - 42 U.S.C. Section 1981 when at the face of Section 31-296 of the Conn. Gen. Stat. Annot. of the Compensation Act which makes it unlawful for the carrier to take a unilateral action to discontinue payment of a claimant he, the Commissioner, who presides over the laws of the system, states that the carrier could take a unilateral action against the provisions of the Compensation Act to discontinue

payment of the plaintiff's weekly income just to make it possible for the insurance carrier to wrongfully withhold as much as $1191.00 of Plaintiff's weekly income?

4. Does a Workers Compensation Commissioner violate plaintiff's civil rights as alleged when in an effort to place financial hardships upon plaintiff to achieve his intended goal he wrongfully reduces plaintiff's already reduced weekly income by as much as $97.00/week even though for almost 10 years plaintiff had been receiving the same rate of weekly income at the face of rising costs of living?

5. Does a Workers Compensation Commissioner, Commissioner Mastropietro who attempts to cover-up his unlawful conduct after reducing plaintiff's weekly income in favor of the insurance carrier against conditions upon which a claimant's income could be reduced under the Act, violate plaintiff's alleged civil rights when he defends that action by saying he reduced plaintiff's income to appease the carrier to

continue to make payments pending a proposed hearing and yet fail to take some action against the carrier when it took another unilateral action to discontinue payment of even that reduced weekly income when the hearing was yet to be held?

6. Does the Workers Compensation Commission, deny plaintiff a right to a Due Process when it handles plaintiff's claim for benefits by arbitrary and capricious means just to make it possible for it to deny plaintiff of any particular benefit it does not want plaintiff to have, as alleged? For example, while the Commission would not give plaintiff an increase in his weekly income upon a reason that his injury occurred before the increase in the maximum allowed weekly rate, the same commission, however, when calculating plaintiff's lump-sum would not use the discount rate at the time of plaintiff's injury but would rather use the higher discount rate which goes with the increase in the weekly rate just becaue the Commission did not want to give plaintiff what was due him?

7. Does the Commission's action which denied plaintiff the "31-308" benefits of the Compensation Act which was supposed to be given to plaintiff when he was released to look for work within his physical limitations pending a surgery, and instead put plaintiff on his specific award which was supposed to give plaintiff some income security against the effects of the permanent partial loss of use of his hand due to the extent of his injury and as a result made plaintiff exhaust all that specific award while he was looking for work, violate plaintiff's right to equal protection - U.S. Const. Amend. XIV Sect. 1, Equal Benefit Of The Laws - 42 U.S.C. Sect. 1981, Due Process - 42 U.S.C. Sect. 1983?

8. Does the Commission's alleged arbitrary and capricious means of handling plaintiff's claim for benefits in an effort to deprive plaintiff of any particular benefit it does not want plaintiff to have and as a consequence cause the total ruin which plaintiff's whole life has been suffering, constitute a

violation of plaintiff's established federal statutory and constitutional rights?

For example, Bateson vs. Griese, 857 F.2d 1300, 1303, (CA9, 1988) holds that a city's denial of a building permit to an individual who met all requirements was such an arbitrary discriminatory administration of local regulations as to constitute a violation of petitioners' substantive due process rights.

9. Does the Exclusivity provisions of the Compensation Act which does not provide a means by which even Intentional and Deliberate wrongful actions of Commissioners could be dealt with, with immediate effect to prevent resultant injuries to innocent injured workers who need assistance to enable them to get back on their feet and further insulate and protect perpetrators of such conduct from prosecution to an extent that the Commission and the insurance carrier could conspire for a common interest, violate the plaintiff's civil rights as alleged?

10. Did the District Court err in dismissing the plaintiff's action based upon the ruling of plaintiff's 1994 Superior Court action which stated in part that the Superior Court is a wrong venue for complaints which stem out of issues which involve Workers Compensation benefits and consequently blocked every action the plaintiff could take to attempt to correct the errors made in the ruling?

For example, the Superior Court stated that plaintiff failed to exhaust administrative remedies when (a) the Supreme Court had stated under Monroe vs. Pape, 365 U.S. 167 (1961) that "exhaustion of state judicial remedies not required in actions under 42 U.S.C. Sect. 1983," such as plaintiff's; the same message that "exhaustion of state administrative remedies not required in actions under 42 U.S.C. Section 1983" was put across under Patsy v. Board of Regents, 457 U.S. 496, 73 L.Ed. 2d 172, 102 S.Ct. 2557 (1982), (b) Plaintiff was complaining about a wrongful conduct of the Commission which makes the Commission subject plaintiff's claim for benefits by arbitrary and capricious

means whenever the Commission wants to deprive plaintiff of any particular benefit it does not want plaintiff to have, and for that reason Plaintiff could not exhaust administrative remedies without making the defendant of his action, i.e. the Commission, the judge of such an action.

11. Did the district court err in dismissing plaintiff's action based upon its assumption that plaintiff's 1994 Superior Court action and the plaintiff's district court action were the same and upon that dismissing the plaintiff's action based upon the Superior Court's ruling?

12. Did the district court err in denying plaintiff's Motion For Reconsideration, especially after it expressed some difficulty in understanding plaintiff's complaint?

13. Did the district court err in its assumption that "what plaintiff is primarily seeking in this federal forum is equitable relief from various decisions of the Compensation

Commissioner", especially when the only way by which plaintiff could tell the court about how his rights were violated was to tell the court about the incidences which took place?

14. Did the district court err in dismissing plaintiff's action against Commissioner Mastropietro - In His Individual Capacity - after the court stated:

"It is unclear from plaintiff's Amended Complaint whether his claims are against the Commissioner in his capacity as an official of the state, or in his individual capacity, or both" and yet would not entertain plaintiff's Motion For Reconsideration and additionally at the front page of the Complaint, the plaintiff has specified that the action is against the Commissioner-In-His Individual Capacity?

15. Did the Court of Appeals, 2nd Circuit, err in dismissing the plaintiff's action as it did at the face of the

argument which the plaintiff raised in his Petition For A Re-hearing?

16. Did the 2nd Circuit err in dismissing plaintiff's action as did the District Court?

17. Would the Court of Appeals dismissal of plaintiff's action, have been different if plaintiff had not applied for counsel to make the court declare his action as frivolous before the 2nd Circuit had a chance to even hear the plaintiff's argument let alone to evaluate the plaintiff's Petition For A Re-hearing?

18. Did the 2nd Circuit err in dismissing the plaintiff's action against Commissioner Mastropietro-In His Individual Capacity?

19. Did the Court of Appeals err in dismissing the plaintiff's action against the Workers Rehabilitation with a reason that the plaintiff failed to serve that defendant with the Summons and Complaint when it was the District Court that was supposed to do the service as it did with the other defendants?

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Washington, DC 20543

LIST OF PARTIES

Ben. Gyadu

P.O. Box 4314

Waterbury, CT 06704

The Workers Compensation Commission, Et Al

c/o The State Attorney General's Office

55 Elm Street

Hartford, CT 06106

ATTN: Attorney Lisa G. Weiss

There are no other parties to this action.

Ref.: Supreme Court of U.S. Date: February 13, 1998
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TABLE OF AUTHORITIES

Statutes:

U.S. Const. Amend. XIV, Section 1

42 U.S.C. Section 1983

42 U.S.C. Section 1981

42 U.S.C. Section 1985(3)

Conn. Gen. Stat. Annot. Section 31-296

Conn. Gen. Stat. Annot. Section 31-297a

Conn. Gen. Stat. Annot. Section 31-315

Conn. Gen. Stat. Annot. Section 4-142

Cases:

Monroe Vs. Pape, 365 U.S. 167 (1961)

Pennsylvania Vs. Local 542, IUOE, 347 F. Supp., 268 (E.D. Pa. 1972)

Patsy Vs. Board Of Regents, 457 U.S. 496, 73 L.Ed. 2D 172, 102 S.Ct. 2557 (1982)

Bateson vs. Greise, 857 F.2d 1300, 1303 (CA 9, 1988)

Felder Vs. Casey, 487 U.S. 131 (1988) At 149.

Easter House Vs. Felder, 910 F.2D 1387 (7Th Cir., 1990) At 1406.

Buckley Vs. Fitzsimmons (1993) 509 U.S. 259, 125 L.Ed. 2d. 209, 113 S.Ct. 2606, 93 CDOS 4669, 93 Daily Journal, DAR 7961.

Ref.: Supreme Court of U.S. Date: February 13, 1998
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STATEMENT OF GROUNDS INVOKING THIS COURT'S JURISDICTION

This is a timely filed petition for Certiorari from the decision of the Court of Appeals, 2nd Circuit, N.Y., N.Y. which dismissed part of plaintiff's complaints and after a hearing dismissed the whole Complaint.

This court has jurisdiction to hear this matter because it alleges violation of plaintiff's established federal statutory and constitutional rights.

Ref.: Supreme Court of U.S. Date: February 13, 1998
Washington, DC 20543

STATEMENT OF THE CASE

This is an appeal from a finding of the Court of Appeals, 2nd Circuit, New York, New York, in dismissing all but one issue of the plaintiff's action upon considering plaintiff's application for counsel in conjunction with the plaintiff's appeal. That part of the Complaint, the Dependency Allowance issue, which was not dismissed was later dismissed by the Summary Order of the 17th Nov., 1997 after a hearing.

Plaintiff appealed the District Court's ruling based upon errors, such as the following, which the District Court made about the plaintiff's action.

(a) The District Court not only expressed some difficulty in understanding plaintiff's complaint and demonstrated that fact in the ruling by the profound misinterpretation of the plaintiff's complaint but it as well expressed a need for some supporting documents.

However, the court denied plaintiff's Motion For Reconsideration which was intended to provide the court with

the needed informations and supporting documents which would make the court re-evaluate the complaint to correct the errors made. The court's reason for dismissing the plaintiff's Motion For A Re-hearing was that the motion was untimely.

Because plaintiff's earlier action in 1994 at the State Superior Court against the Commission was dismissed, the District Court erroneously assumed that plaintiff initiated his federal court action out of frustration and that plaintiff's action was intended to ask the district court to review the rulings of the compensation hearings and overturn the rulings accordingly.

"Frustrated with the treatment that he has received by the Commission and Commissioner and having been unsuccessful in his attempts to get relief from the state court, plaintiff now asks this federal court to intervene in the State Workers' Compensation process and to order the Defendants to take action. This we will not do," the court stated.

This statement represents a typical example of the misinterpretation of the plaintiff's action and hence the errors upon which plaintiff's action was dismissed.

By telling the court about those incidences to enable the court to understand what plaintiff claims, constitutes the kinds of arbitrary and capricious means by which the defendants have been handling the plaintiff's claims for benefits in their efforts to deprive plaintiff of any particular benefit which they do not want plaintiff to have, the plaintiff's Complaint was rather misinterpreted by the District Court. Upon that the District Court stated that the plaintiff's action was an attempt to "ask the federal court to intervene in the State Workers Compensation process..." And yet without telling the court about those kinds of incidences, plaintiff would only be complaining and nobody would know why the plaintiff claims his civil rights have been violated by the defendants.

From the very beginning of the plaintiff's complaint, it would be discovered that plaintiff was complaining about the

wrongful culture of the system, and how the system is run to make it possible for the Commission and the insurance carrier to even conspire to achieve a common interest; laws have not been respected and have been ignored so as to achieve a particular goal sought.

This is why the defendants could continue to subject plaintiff to the same kinds of violations of plaintiff's civil rights even while there is a pending legal action against those kinds of wrongs against plaintiff, harassing the plaintiff in the process.

Under "Count One" page 3 of plaintiff's complaint, plaintiff began his complaint by telling the court about the Commission's wrongful conduct by which it has been running the system.

It would be clearly discovered that the incidences which the plaintiff gave account of constitute examples of those kinds of acts which plaintiff claimed were a habit of the Commission and represent a violation of his civil rights.

The District Court expected plaintiff to appeal unlawful conduct of the Commission and through nobody but the very Commission, i.e. the defendant.

This was how the District Court dismissed the plaintiff's action and hence a typical example of why plaintiff claims that his action was erroneously dismissed by the District Court.

Under Felder vs. Casey, 487 U.S. 131 (1988) at 149 the Supreme Court stated:

"While the exhaustion required by Wisconsin's notice of claim statute does not involve lengthy or expensive administrative proceedings, it forces injured persons to seek satisfaction from those alleged to have caused the injury in the first place. Such a dispute resolution system may have much to commend it ---".

As another example of the errors the District Court made, the court stated that plaintiff "contends that the Commission should have increased his weekly income..."

This again was not the message which the plaintiff was trying to put across in plaintiff's reference to the increase in the weekly benefit he was not given.

Plaintiff made the reference to let the court know that while the Commission would not give plaintiff the increase upon a reason that his injury occurred before the increase in the maximum allowed weekly rate, the same Commission however would not use the discount rate at the time of plaintiff's injury when calculating the lump-sum of plaintiff, but would rather use the higher discount rate that goes with the increase in the maximum allowed weekly rate, just because the Commission did not want plaintiff to have what was due him.

The mention of the increase in weekly rate which plaintiff said he was not given was just to tell the court about the kinds of arbitrary and capricious means by which the Commission has been handling the plaintiff's claims for benefits in an attempt to deprive the plaintiff of his benefits.

(b) The District Court did not find anything wrong about Commissioner Mastropietro's malicious acts.

However from the Compensation Act, a copy enclosed and labeled A1, it would be discovered that the Commissioner's act blatantly violated the Law of the Compensation Act and hence denied plaintiff his civil rights as alleged.

Every benefit of the Workers Compensation is guided by the provisions of the Act and depends upon conditions upon which it is granted and hence it is DISCRETIONARY. They are all "temporary" and that is why there is "temporary" total and "temporary" partial benefits. The plaintiff's "308a" benefits is a type of "temporary" partial benefits. The insurance carrier, by law, does not take any unilateral action to terminate any of them nor does it take any unilateral action to grant any. This is why there is a hearing to grant or to terminate any of them. The plaintiff's "308a" benefits is not anything different from any of them.

To call it discretionary to allow the insurance carrier to terminate it as it pleases constitutes a blatant violation of plaintiff's civil rights as alleged and it sets a very bad precedent.

Because of those unlawful acts of Commissioner Mastropietro, the insurance carrier took another unilateral action to terminate the plaintiff's weekly income at even the reduced rates while the hearing upon which Commissioner Mastropietro claimed he reduced the plaintiff's weekly income was yet to be held.

Consequently for over 76 consecutive weeks as of date, plaintiff who is supposed to receive a weekly income has been deprived of it by unlawful acts.

Based upon this blatant erroneous dismissal of the plaintiff's action by the District Court, the plaintiff expected that the Court of Appeals would overturn the ruling as a matter of course.

However, the Court of Appeals affirmed the District Court's ruling and even stated that the plaintiff did not serve

the workers rehabilitation with the Summons and Complaint when it was the District Court that was supposed to serve the Workers' Rehabilitation with the Summons and Complaint as it did with the other defendants.

The plaintiff moved for a Petition For A Re-hearing in an attempt to make the Court of Appeals correct the errors of its ruling.

This was however denied on the 28th of January, 1998, without any explanation but a handwritten statement at the front page of the Summary Order that states:

"Issued As A Mandate". The plaintiff was therefore compelled to appeal the ruling, pro se, without funds, to the U.S. Supreme Court.

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ARGUMENT

Because the district court identified plaintiff's action as that of the plaintiff's 1994 Superior Court action, plaintiff's district court action was evaluated by the same standards as that of the 1994 action even though the two differ in many respects.

Consequently, the District Court dismissed the plaintiff's action erroneously as that of the Superior Court and did not even consider the Commission's aggravated offense against plaintiff for its repeated violations of plaintiff's civil rights as alleged, harassing the plaintiff as a retaliatory measure for plaintiff's lawsuit against the Commission, in violation of plaintiff's right to sue - 42 U.S.C. Section 1981 as discussed under Pennsylvania vs. Local 542, I.U.O.E., 347 F. Supp., 268 (E.D. Pa. 1972).

By identifying the plaintiff's action as that of the Superior Court's action in 1994, the District Court reduced

every part of the plaintiff's action along the lines of the plaintiff's Superior Court action.

As a result, Commissioner Mastropietro's action which was a typical example of the Commission's deliberate wrongful conduct upon which plaintiff's claim for benefits has been handled whenever the Commission does not want plaintiff to receive any particular benefit due him, was not prosecuted and was seen as an act which calls for an appeal through the Compensation System and hence an action that calls for Exhaustion of Administrative Remedies at the face of the fact that (a) Exhaustion of state judicial remedies not required in actions under 42 U.S.C. Section 1983 Monroe vs. Pape, 365 U.S. 167 (1961); exhaustion of state administrative remedies not required in actions under 42 U.S.C. Section 1983 Patsy vs. Board of Regents, 457 U.S. 496, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982).

(b) Under Easter House vs. Felder, 910 F. 2d 1387 (7th Cir., 1990) at 1406 the court stated:

"An action against a state official for conduct in his official capacity will withstand a motion to dismiss the complaint on sovereign immunity grounds if the complaint alleges that the official is ... violating the Law of Illinois and thus acting beyond his authority."

(c) Qualified Immunity exists unless an official violates clearly established federal statutory or constitutional rights of which a reasonable person would have known Buckley vs. Fitzsimmons (1993) 509 U.S. 259, 125 L. Ed. 2d. 209, 113 S. Ct. 2606, 93 CDOS 4669, 93 Daily Journal, DAR 7961 and that Commissioner Mastropietro's acts as alleged clearly violated "established federal statutory or constitutional rights of which a reasonable person would have known.

Commissioner Mastropietro:

(A) Declared that the carrier could take a unilateral action to discontinue payment of plaintiff's weekly income against the provisions of Section 31-296 of the Compensation Act so as to achieve his intended purpose as alleged, in violation of plaintiff's right to

(a) Equal Protection - U.S. Const. Amend. XIV, Section 1

(b) Due Process - 42 U.S.C. Section 1983

(c) Right to Sue - 42 U.S.C. Section 1981

(d) Equal Benefit Of The Laws - 42 U.S.C. Section 1981

(e) Be free from acts of conspiracy - 42 U.S.C. Section 1985(3).

B. In his ambition to deprive plaintiff of benefit due the plaintiff, ignored the provisions of Section 31-296 of the Connecticut General Stat. Anno. (C.G.S.A.) and held a hearing that rewarded the carriers unlawful act of withholding and discontinuing payments of the plaintiff's weekly income against the provisions of the Compensation Act, instead of holding a hearing to punish the carrier's unlawful act of withholding and discontinuing payment of plaintiff's weekly income against the provisions of Section 31-296 of the Conn. Gen. Stat. Anno. of the Compensation Act.

C. In his ambition to achieve his intended purpose ignored the provisions of Section 31-315 of the Conn. Gen. Stat. Anno. of the Compensation Act, and reduced the plaintiff's weekly income against the provisions of the Act, which specifies conditions under which a claimant's weekly income may be modified.

D. Asked plaintiff, at the presence of carrier's counsel, to look for jobs whose duties plaintiff could not medically perform.

E. In his ambition to achieve his intended goal, abruptly changed the purpose of a hearing which was intended to evaluate the quality of plaintiff's job searches to that of a hearing of settlement of plaintiff's case so as to get the plaintiff off the system, regardless of plaintiff's condition.

F. Ignored the provisions of Section 31-296 of the Compensation Act and overlooked or ignored the carrier's unlawful act of taken a unilateral action to discontinue payment of plaintiff's weekly income and with that held a hearing which the carrier requested to discuss its intent to

discontinue payment of plaintiff's weekly income after the carrier had already discontinued the payment.

As a result of this erroneous evaluation of the plaintiff's complaint the defendants deliberate violations of the plaintiff's right to Equal Protection, Equal Benefit of the Laws, Due Process, right to sue which from all evidences stem from nothing but plaintiff's race, national origin, and an ambition to make plaintiff's life as miserable as they could make it, as retaliatory measures against plaintiff for instituting a legal action against the Commission were not prosecuted.

Consequently plaintiff did not have a choice but to appeal the erroneous ruling to the Court of Appeals, 2nd Circuit, N.Y., N.Y.

The 2nd Circuit upon plaintiff's application for counsel, dismissed all but one of the issues of the plaintiff's complaint which involves the arbitrary and capricious means by which the Commission deprived plaintiff of his Dependency Allowance.

After the hearing on the dependency allowance issue, the Court of Appeals affirmed the District Court's ruling stating that (a) plaintiff's action against the Commission is barred by the 11th Amendment even though it is not for, it is an Excepted Claim against the state according to Section 4-142 of the Ct. Gen. Stat. Annotated a copy enclosed and labelled A(2) (b) the limitation of the dependency allowance "is for payments only for children or stepchildren" even though the plaintiff proved and maintained throughout the Complaint that the law is not interpreted literally and for that reason benefit is not given only to "children or stepchildren" but children of guardianship, adopted children, etc. are given the allowance as long as the means by which these children became dependent children of a claimant is the known and recognized or accepted practice in the Western culture (c) the second defendant, Workers' Rehabilitation does not appear to exist and that the plaintiff did not serve that defendant even though the service of Summons and Complaint was supposed to have been effected by the District Court as it did with the

other defendants and there exists a Workers' Rehabilitation entity with a director by the name of Paul Goodney (d) the plaintiff's Due Process Complaint of the Dependency Allowance was a "mere assertion that state remedies are lengthy" even though throughout the Complaint the plaintiff maintained that it was not only that procedural remedies take too long but laws were broken, laws were ignored or disregarded by both the Commission, defendant, and the insurance carrier just to make it possible to deprive the plaintiff of the benefit; the plaintiff stated that on two consecutive occasions the carrier dishonored agreements at informal hearings to make the necessary payments, in violation of Section 31-297a of the Compensation Act without the Commission taking any action against the carrier's unlawful acts; the plaintiff pointed out that during the 2nd hearing the carrier's counsel, Attorney Richard Stabnick was asked by the Commissioner who presided over the hearing, Commissioner Linda Johnson, to call the carrier to confirm the carrier's agreement of the conclusion and the award of the

hearing to which counsel did and came back to the hearing room to report that the carrier agreed wholeheartedly to the award and the conclusion of the hearing and that he spoke to "one young lady by the name of Joan Yunga."

With that erroneous evaluation of the plaintiff's Due Process Complaint of the Dependency Allowance, the Court of Appeals declared the plaintiff's Due Process Complaint of the Dependency Allowance was moot once the Compensation Review Board held the hearing of the plaintiff's complaint even though the consequential damages of the defendants action upon the plaintiff and the innocent children are perpetual or continue to cause undeserved irreparable damages to plaintiff and the innocent children (e) the plaintiff's action was against Commissioner Mastropietro-In His Official Capacity at the face of the fact that, at the very front page of the plaintiff's action, the plaintiff states that his action is against Commissioner Mastropietro-In His Individual Capacity.

Based upon the alleged errors of the 2nd circuit in affirming the District Court's dismissal of the plaintiff's action, the plaintiff moved for a Petition For A Re-hearing and analyzed with supporting documents, the errors made in the ruling of the Court of Appeals.

The Court of Appeals, however denied the plaintiff's Petition For A Re-hearing on the 28th of January, 1998 without any clarification.

Consequently the plaintiff did not have any choice but to appeal the ruling to the Supreme Court of the U.S. in an effort to seek redress against the defendants deliberate wrongful actions whose effect has been causing an unprecedented rate of ruin to plaintiff's life.

CONCLUSION

Plaintiff's life has been ruined by the consequences of the defendants deliberate violations of plaintiff's civil rights as alleged, from the very beginning that plaintiff unfortunately became a recipient of Workers Compensation claims for benefits which are intended to assist claimants to get back on their feet.

Plaintiff therefore hopes his Petition For Certiorari would be granted to enable him to seek redress against those alleged violations of his civil rights.

Thank you.

Sincerely,

Ben. Gyadu
P.O. Box 4314
Waterbury, CT 06704

Date: February 13, 1998

APPENDIX

The District Court of Connecticut

Ben. Gyadu, Appellant

vs.

Workers' Compensation Commission, Et Al

Doc. #: 96-CV-0043

(i) Dismissal of Plaintiff's Action

(ii) Motion For Re-Consideration & Dismissal Of Motion For Reconsideration

Court Of Appeals, 2nd Circuit, N.Y., N.Y. 10007

Ben. Gyadu, Appellant

vs.

Workers Compensation Commission, Appellee

Doc. #: 96-7950, 96-9616

(i) Dismissal of Plaintiff's Appeal

(ii) Petition For A Re-hearing & Denial Of Petition For A Re-hearing

Sincerely,

Ben. Gyadu, Appellant

Date: February 13, 1998

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The
Supreme Court Of The United States
Washington, D.C. 20543
October, 1997 Term

Accompanying Rulings of
Petition For A Writ Of Certiorari

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49 pp

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BEN GYADU,
Plaintiff

No. 3:96-CV-0043 (GLG)

- against -

WORKERS' COMPENSATION COMMISSION, WORKERS' REHABILITATION COMMISSION, and JOHN A. MASTROPIETRO, COMMISSIONER,

Defendants.

Opinion

APPEARANCES:

For the Plaintiff:

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For the Defendants:

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Attorney General

WILLIAM J. McCULLOUGH
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GOETTEL, D. J.,

Defendants have moved this Court to dismiss Plaintiff's Amended Complaint, in which Plaintiff seeks to hold Defendants liable under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S 2000e et seq., and 42 U.S.C. S 1983 for their alleged failure to provide Plaintiff with certain benefits and rehabilitative services to which he claims entitlement under difficulty in finding another job, particularly one which would compensate him commensurately with what he was earning prior to his injury. (The Amended Complaint does not indicate what Plaintiff's occupation was prior to his injury). He complains that the Commissioner has encouraged him to look for jobs which he cannot perform, in an effort to get Plaintiff "off the system." Plaintiff alleges that this has caused him a great deal of anxiety, distress, and financial hardship.

Plaintiff, in general, complains of what he describes as the Commission's "arbitrary and capricious" handling of his claims. He alleges that the Commission has made it possible for the insurance carrier to withhold various benefits. As

examples, he cites Defendants' failing to take action when the carrier "dishonored its agreement" to pay dependency benefits,[1] and when the carrier discontinued his weekly section 308a benefits (C.G.S.A. S 31-308a) for a three-week period in late December of 1995.[2] He alleges that the

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[1] We do not have the record of the Workers' Compensation hearings before us. However, it appears from Plaintiff's 28-page Amended Complaint that Plaintiff was claiming a dependency allowance for his late sister's children for whom he claims he was providing support. Section 31-308b, C.G.S.A. (repealed effective July 1, 1991), provided for a dependency allowance of ten dollars per week for each of an employee's children or stepchildren, under certain circumstances. Apparently, this allowance was disallowed, and Plaintiff appealed. He states in his Amended Complaint "[i]t is 2 years ago now since the plaintiff appealed a decision, which arbitrarily denied him dependency allowance and till to date he has not had a hearing on that appeal . . . ." (Amended Complaint at 8).

[2] Section 31-308a of the Connecticut's Workers' Compensation Act covers "[a]dditional benefits for partial permanent disability," which may be awarded by the Commissioner after the payments provided in section 31-308 have been paid for the period set forth in that section. Subsection (a) of that section concludes that "[a]dditional benefits provided under this section shall be available only to employees who are willing and able to perform work in this state." Subsection (b) provides that [n]otwithstanding the provisions of subsection (a) of this section, additional benefits provided under this section shall be available only when the nature of the injury and its effect on the earning capacity of an employee warrant additional compensation."

Commissioner gave his blessing to this "illegal action."[3] He also challenges the Commissioner's calculation of his weekly benefits "based on an arbitrary figure he chose as the plaintiff's current earnings capability," which resulted in a decrease of $97.00 in Plaintiff's weekly benefits. He contends that the Commission should have increased his weekly benefits when the statutory maximum was increased in 1991 (pursuant to P.A. 91-339, S 29, eff. Oct. 1, 1991), some five years after the date of his injury. He complains about the Commissioner's

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In his Amended Complaint, Plaintiff describes the circumstances surrounding the termination of his 308a benefits for a period of three weeks as follows: Plaintiff states that the carrier stopped paying his benefits because they were informed that plaintiff was "looking for work his own way." The carrier, after stopping the weekly benefits on December 22, 1995, then wrote the Commission for an informal hearing. Plaintiff asked the Commission to intercede on his behalf to require the crrier to reinstate his benefits, but the Commission took no action, pending the informal hearing on January 4, 1996.

[3] We do not have the Commissioner's ruling before us, but from what we can discern from the Amended Complaint, it appears that the Commissioner at the hearing ruled that, because these benefits were discretionary and because the duration "within which the benefits was [sic] granted was exhausted," the carrier was entitled to discontinue the benefits prior to an informal hearing.

use of an allegedly incorrect discount rate in calculating the lump sum payment (see C.G.S.A. S 31-302) of a portion of his benefits.[4] And, he contends that he has been denied proper rehabilitative services and job search benefits under section 31-308, C.G.S.A., thus requiring him to take out student loans[5] and exhaust other benefits.[6] The only one of these

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[4] Section 31-302, C.G.S.A., provides in relevant part that

> [c]ompensation payable under this chapter shall be paid at the particular times in the week and in the manner the commissioner may order . . .; but, when he finds it just or necessary, the commissioner may approve or direct the commutation, in whole or in part, of weekly compensation . . . into a single lump sum . . . In any case of commutation, a true equivalence of value shall be maintained, with due discount of sums payable in the future .

Plaintiff complains of the Commissioner's use of the current discount rather than the discount rate applicable at the time of his accident. The state court in Gyadu v. Chairman, Workers Compensation Commission, No. 122258, 1994 WL 711199 (Conn. Super. Memorandum of Decision, Dec. 9, 1994) (see note 5, infra), found that the Commissioner's decision was an order or decision under C.G.S.A. S 31-301(a), subject to the administrative review procedures of that section.

[5] Although not mentioned in the Plaintiff's Amended Complaint, the Connecticut Superior Court notes in a Memorandum of Decision dated December 9, 1994,

adverse actions that Plaintiff has appealed through the administrative appeals process set forth in the Workers' Compensation Act is the Commission's denial of a dependency allowance.

In this case, Plaintiff seeks an equitable relief, inter alia, an order that would require the Defendants to provide the Court with specific strategies which they would pursue to find "ways and means to help plaintiff secure a gainful employment whose income would, at least commensurate

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dismissing Plaintiff's state court complaint for failure to exhaust administrative remedies (see discussion at pages 6-7, infra), that the Plaintiff, while disabled, received his bachelor's degrees in geology in 1989-90, and in economics in 1989-90, as well as his masters degree in public administration in June of 1994. (The Decision also mentions a bachelor's degree in business administration in 1980-81 and a master's degree in business administration in 1981-82. However, based on the information that we have before us on this Motion to Dismiss, it appears that these were prior to the injury that is the subject of his complaints in this action). See Gyadu v. Chairman, Workers Compensation Commission, No. 122258, 1994 WL 711199 (Conn. Super., Memorandum of Decision, Dec. 9, 1994).

[6] Plaintiff complains that he was denied section 308, C.G.S.A. S 31-308, benefits while he was looking for work. Instead, he states that he was given a specific award under section 31-308a for the permanent partial disability, C.G.S.A. S 31-308a, which he claims that he exhausted in his job search efforts.

with the plaintiff's income 10 years ago . . .;" to adjust Plaintiff's weekly benefits; to pay the cost of Plaintiff's training, including his student loan; to provide on-the-job training assistance; to "recover" his "specific award" for the "permanent partial loss of the use of his master hand," which award he exhausted in his search for a job because of Defendants' denial of benefits; to refund three weeks of weekly benefits that were withheld; and to pay the dependency allowance which was denied to Plaintiff. He also demands that this Court "[m]ake the defendants state that not until they assist the plaintiff in any way possible to secure a gainful employment, they should continue to support plaintiff."

As money damages, h e asks this Court award damages to compensate Plaintiff for loss of income and to reasonably compensate him for injuries he has suffered because of Defendants' actions.

In addition, he challenges as unconstitutional (a) Defendants' actions which denied Plaintiff section 308,

C.G.S.A. S 31-308, benefits; (b) the law or regulation which made Defendants take this action; (c) section 31-308a, C.G.S.A., which he alleges allowed the Commissioner to encourage the carrier to withhold and discontinue benefits without due process and allowed the Commissioner to use an arbitrary and capricious means to determine Plaintiff's weekly benefits; (d) the informal hearing process as a violation of due process; (e) the law that establishes the maximum weekly compensation rate,[7] "as it subjects prior injury high income earning claimants, as the plaintiff, to unfair and unequal treatment and therefore injustices;" and (f) section 31-284, the exclusive remedy provision of the Workers' Compensation Act, applicable to employers, as a violation of due process.

As noted above, in seeking this relief, he attempts to invoke this Court's federal question jurisdiction under Title VII, 42 U.S.C. S 2000e et seq., and 42 U.S.C. S 1983.

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[7] Presumably, Plaintiff is referring to C.G.S.A S 31-309, "Maximum Weekly Compensation. Determination of Average Weekly Earnings of Production and Related Workers in Manufacturing."

DISCUSSION

Plaintiff has previously filed a similar complaint[8] in state court, which was dismissed due to Plaintiff's failure to exhaust the administrative remedies provided in the Workers' Compensation Act. Gyadu v. Chairman, Workers Compensation Commission, No. 122258 (Superior Court, Judicial District of Waterbury, Conn., Memorandum of Decision Dec. 9, 1994). The Superior Court correctly noted that the Compensation Act contains an elaborate administrative procedure for the resolution of claims for compensation under the Act. Compensation Commissioners have the authority to hear all matters arising under the Act with respect to the entitlement to benefits. C.G.S.A. S 31-278, 31-297, 31-297a, 31-298. Their decisions are then subject to review by the Compensation Review Board. C.G.S.A. S 31-301(a), 31-280b(b). Additionally, the parties may seek further review of any question of law by the state

[8] Plaintiff's state court complaint challenged the same actions of the Commission but it did not raise the constitutional issues asserted in this federal action.

appellate court. C.G.S.A. S 31-301b. Accordingly, the Superior Court dismissed Plaintiff's state court complaint, finding that Plaintiff's claims seeking redress for the denial of an increase in benefits in accordance with the increase in the statutory maximum, for the denial of certain rehabilitative services, and the application of the allegedly incorrect discount rate to his application for a lump sum portion of his benefits fell within the scope of the administrative remedies provided by the Compensation Act and, therefore, were committed to the administrative review procedures therein.

Because of the constitutional claims now asserted by Plaintiff in his Amended Complaint, our task is not quite so easy. In ruling on Defendants' Motion to Dismiss, we consider each of the Plaintiff's Claims separately.

I. Plaintiff's Claims for Equitable Relief

A careful review of Plaintiff's Amended Complaint indicates that what Plaintiff is primarily seeking in this federal forum is equitable relief from various decisions of the

Compensation Commissioner. This is not the function nor province of this Court. We do not sit as an alternative forum to the administrative appeals process set forth in the Workers' Compensation Act. A workers' compensation claimant, unhappy with the outcome of a compensation hearing, may not come into this Court to obtain review of that decision absent some legitimate basis for invoking the federal jurisdiction of this Court.

The Second Circuit has recently addressed the permissible scope of the abstention doctrine in the case of Tribune Co. v. Abiola, 66 F.3d 12, 15-17 (2d Cir. 1995), an action brought by a newspaper against its union employees, their unions, attorneys and doctors, alleging a conspiracy to submit fraudulent workers' compensation claims. The Second Circuit began its analysis with a discussion of the Supreme Court's decision in Burford v. Sun Oil Co., 319 U.S. 315 (1943). Burford involved predominantly state law claims, as well as a Fourteenth Amendment challenge to the Texas Railroad Commission's grant of an oil drilling permit, which

the Court characterized as a "simple proceeding in equity to enjoin enforcement of the Commission's order." 319 U.S. at 317. In Burford, the Court held that, as a matter of sound equitable discretion, the district court had properly declined to exercise its jurisdiction because of several factors, including the complex state regulatory scheme involved, id. at 318-24, the local importance of the matters before the regulatory agency, id. at 320, the existence of a unified system of review of commission decisions by a single court, the potential for delay and misunderstanding of local law, needless conflict with the state policy by federal review, id. at 325, and because plaintiff's federal claims could be heard in the relevant state proceedings and would be "fully preserved" by appeal to the Supreme Court, if necessary, id. at 334. Tribune Co., 66 F.3d at 15.

The Second Circuit then discussed the subsequent Supreme Court decision in New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350 (1989) ("NOPSI"), in which the "Supreme Court took pains . . . to

reiterate the narrow reach of Burford abstention, and to distill the distinctively equitable principles underlying that doctrine." 66 F.3d at 15. The Second Circuit noted that the Supreme Court in NOPSI held that "there are some classes of cases in which the withholding of authorized equitable relief because of undue interference with state proceedings is 'the normal thing to do,'" 491 U.S. at 359, and that a federal court asked to provide equitable relief "should be wary of interrupting the proceedings of state administrative tribunals by use of the extraordinary writ of injunction." NOPSI, 491 U.S. at 362.

Recognizing that there is a split among the Circuits as to whether the Burford abstention doctrine applies only when a federal court is sitting in equity, the Second Circuit, without expressly deciding the issue, held that only claims seeking equitable relief will "generally" pose a danger of interfering with state proceedings or orders. Tribune Co., 66 F.3d at 16. Thus, we consider the abstention doctrine only with respect to Plaintiff's claims for equitable relief.

We have carefully considered the relief sought by Plaintiff and have determined that this is an appropriate case in which to exercise abstention as to the equitable remedies sought by Plaintiff with respect to the challenged actions of the Defendants. Here Plaintiff challenges decisions made under a relatively complex state system, which the State has relegated to a special administrative tribunal to resolve. This Court is in essence being asked to usurp the authority of the Connecticut Workers' Compensation Board and the Commissioner. Moreover, as to the relief that Plaintiff seeks with respect to the denial of his claim for a dependency allowance, Plaintiff has an administrative appeal pending, although he is upset by the length of time the appeals process is taking. And, as to the other rulings that he, in essence, is asking this Court to reverse, he has failed to file any appeals, claiming that the process takes too long.

Frustrated with the treatment that he has received by the Commission and Commissioner and having been unsuccessful in his attempts to get relief from the state court,

Plaintiff now asks this federal court to intervene in the state workers' compensation process and to order the Defendants to take certain action. This we will not do.

Accordingly, we decline, based on principles of abstention, to exercise jurisdiction over Plaintiff's equitable requests for an order requiring Defendants: (a) to provide strategies that they will pursue to help Plaintiff seek gainful employment with income commensurate with that he was earning prior to his injury; (b) to adjust Plaintiff's weekly benefits; (c) to pay the cost of Plaintiff's training, including his student loan; (d) to provide on-the-job training assistance; (e) to refund his specific award for the permanent partial loss of his hand, which award he exhausted in his search for a job; (f) to refund the three weeks of benefits that were withheld by the carrier; (g) to pay the dependency allowance; and (h) to continue to support Plaintiff until they assist Plaintiff in securing gainful employment.

Therefore, Plaintiff's claims for equitable relief are dismissed.

II. Plaintiff's Claims for Money Damages

We next turn to the issue of Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S 2000e et seq., and 42 U.S.C. S 1983 for money damages against the various Defendants.

A. Plaintiff's Title VII Claims

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S 2000e et seq., prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. 42 U.S.C. S 2000e-2. By its very terms it applies to employers. None of the Defendants listed by Plaintiff is alleged to have been his employer. Additionally, Plaintiff does not allege discrimination in employment on the basis of race, color, religion, sex, or national origin. Thus, Plaintiff has failed to state a cause of action under Title VII, and Title VII cannot serve as a basis for this Court's subject matter jurisdiction over Plaintiff's Amended Complaint. See Smith v. U.S. Air Force, 566 F.2d 957 (5th Cir.), cert. denied, 439 U.S. 819 (1978).

Plaintiff counters that Title VII covers disparate impact discrimination, citing Griggs v. Duke Power Co., 401 U.S. 424 (1971), and claims that the cap on workers' compensation benefits and Defendants' denial of necessary vocational training had a disparate impact on him, since prior to his injury he was earning far in excess of average wage used to calculate the maximum weekly benefit. Thus, he argues that these statutory provisions are discriminatory.

Plaintiff is correct that Title VII does indeed cover discriminatory employment practices that have a disparate impact on members of a protected group. However, this theory of proof requires that an employment practice be challenged as discriminatory on the basis of race, sex, national origin, et cetera, which Plaintiff has not done. Plaintiff is challenging decisions of the Workers' Compensation Commission, as applied to him, and the effect of Connecticut's Workers' Compensation Act. These are not cognizable claims under Title VII under a disparate impact theory or under any other theory.

Therefore, Plaintiff has failed to state a claim under Title VII upon which relief may be granted.[9]

B. Plaintiff's Section 1983 Claims

1. Plaintiff's Claims Against the State Agencies and Commissioner in his Official Capacity

Section 1983 of Title 42 authorizes the imposition of liability against "[e]very person" who, acting under color of state law, violates another person's federally protected rights. The Supreme Court in Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989), has made clear that neither State agencies nor State officials acting in their official capacities are "persons" under section 1983. Thus, neither the Connecticut Workers' Compensation Commission nor Commissioner Mastropietro in his official capacity are "persons" subject to section 1983 liability.

Additionally, the Eleventh Amendment bars federal courts from entertaining suits brought by a private party

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[9] Additionally, Title VII requires an exhaustion of administrative remedies and a right-to-sue letter before an action may be commenced in federal district court. 42 U.S.C. S 2000e-5.

against a State and State agencies. Edelman v. Jordan, 415 U.S. 651 (1974). Contrary to the argument made by Plaintiff, the Eleventh Amendment is not applicable only to the State itself, but its immunity protections extend to State agencies as well. Id. at 663; Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Lipofsky v. Steingut, 1996 WL 290216 (2d Cir. June 4, 1996) (State Insurance Fund is a state agency immune from suit under the Eleventh Amendment).

Plaintiff argues that sovereign immunity does not apply in this case because the payments for benefits which have been denied the Plaintiff come from the insurance carrier, and not the State. But, Plaintiff has not sued the insurance carrier; he has sued a state agency, the State Workers' Compensation Commission, and is seeking money damages from the Commission, which would come from the State treasury, not from the insurance carrier. The Commission as a state agency is entitled to invoke the sovereign immunity protections of the Eleventh Amendment.

Additionally, the case of Heffez v. Washington Metro Area Transit Authority, 569 F. Supp. 1551 (D.D.C. 1983), aff'd 786 F.2d 431 (D.C. Cir. 1986), cited by Plaintiff is inapposite. Heffez did not involve a state agency, but rather a quasi-governmental entity created by an interstate compact, whose immunity was dependent upon the terms of the compact. The Connecticut Workers' Compensation Commission, unlike the Washington Metro Area Transit Authority, is clearly a state agency entitled to invoke the Eleventh Amendment immunity protections available to state agencies.

The Eleventh Amendment immunity to which a State official is entitled in a section 1983 suit depends on the capacity in which he is sued. To the extent that a State official is sued in his official capacity, such a suit is deemed to be a suit against the State, and the official is entitled to invoke the Eleventh Amendment immunity belonging to the State. Gan v. City of New York, 996 F.2d 522, 529 (2d Cir. 1993). As to claims brought against a State official in his or her

individual capacity, the State official has no Eleventh Amendment immunity. Id.

It is unclear from Plaintiff's Amended Complaint whether his claims are against the Commissioner in his capacity as an official of the State, or in his individual capacity, or both.[10] Plaintiff's Amended Complaint names "Commissioner Mastropietro (In His Individual Capacity) - 3d Defendant," but then states that the "3rd Defendant is a State Official," and alleges various claims against the Commissioner in connection with activities taken by him in his official capacity. Because Plaintiff is proceeding pro se, we will treat

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[10] In Kentucky v. Graham, 473 U.S. 159 (1985), the Supreme Court explained the difference between individual-capacity claims and official-capacity claims:

> Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law . . . Official-capacity suits, in contrast, "generally represent only another way of pleading an action against an entity of which an officer is an agent." . . . As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity . . . It is not a suit against the officially personally for the real party in interest is the entity. Id. at 165-66 (citations omitted).

his complaint as stating both individual and official capacity claims against Commissioner Mastropietro. See Frank v. Relin, 1 F.3d 1317, 1326 (2d Cir.), cert. denied, 114 S. Ct. 604 (1993).

The same rationale would apply to the Workers' Rehabilitation Commission, named as a Defendant, if such an entity existed.[11] However, no such agency exists. Accordingly, based on the legal principles set forth above, Plaintiff's section 1983 claims for money damages against both the State Workers' Compensation Commission and Commissioner Mastropietro in his official capacity only are dismissed in that they are not "person[s]" within the meaning of the statute and based on Eleventh Amendment State sovereign immunity.

2. Plaintiff's Claims Against the Commission in his Individual Capacity

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[11] While under C.G.S.A. S 31-283a, the Workers' Compensation Commission is authorized to provide rehabilitation programs for employees suffering compensable injuries, according to the Defendants, there is no state agency or entity known as the Workers' Rehabilitation Commission, and no such entity has been served by Plaintiff or appeared as a defendant in this action.

This ruling, however, does not affect Plaintiff's claims against Defendant Commissioner Mastropietro in his individual capacity. As Plaintiff correctly points out, the Commissioner when sued individually is considered a "person" within the meaning of section 1983, and is not entitled to invoke the protection of the Eleventh Amendment.

a. The Commissioner's Absolute and Qualified Immunity

Defendants assert in their motion to dismiss that the Commissioner, sued in his individual capacity, is entitled to absolute judicial immunity and qualified immunity as to the acts of which Plaintiff complains in his Amended Complaint. Whether an official is entitled to absolute or qualified immunity depends on the nature of the official's functions at issue. "[I]mmunity is justified and defined by the functions it protects and serves, not by the persons to whom it attaches." Forrester v. White, 484 U.S. 219, 227 (1988). As the Second Circuit recently held in Young v. Selsky, 41 F.3d 47, 51 (2d Cir. 1994), "whether non-judicial officers merit quasi-judicial absolute immunity depends upon 'the functional comparability

of their judgments to those of the judge,'" citing Imbler v. Pachtman, 424 U.S. 409, 423 n.20 (1976).[12] Because the approach is functional rather than titular, an official may be absolutely immune from liability with respect to certain functions of his job, but enjoy only qualified immunity as to others. Schwartz, M., Section 1983 Litigation: Claims, Defenses, and Fees S 9.2 (2d ed. 1991).

In his Amended Complaint, Plaintiff complains about the Commissioner's ruling at a hearing allowing the insurance carrier to discontinue weekly benefits for a three-week period of time, which Plaintiff characterizes as giving his "blessing to the carrier's illegal action." (Count Two, page 5, 7). He complains about the Commissioner's calculation of Plaintiff's weekly benefits, which allegedly allowed the carrier to

[12] The Second Circuit then listed six factors that, among others, should be considered in analyzing functional comparability: (1) the need to assure that the individual can perform his functions without harassment or intimidation; (2) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (3) insulation from political influence; (4) the importance of precedent; (5) the adversary nature of the process; and (6) the correctability of the error on appeal. Id.

withhold $97.00 per week from Plaintiff's weekly benefit check. (Count Two, pages 5-6). He complains about the Commissioner's recommending that Plaintiff look for jobs that he contends "every available medical reports [sic] indicates that the plaintiff is not capable of doing." (Count Two, pages 6-7). And, he complains about the Commissioner's failure to set an emergency hearing. (Count Two, page 9).

In the instant case, the duties of the Commissioner are set forth in C.G.S.A. S 31-278. He has the power to summon and examine under oath witnesses; he may direct the production of documents; he can order depositions; he can certify official acts and has "all the powers necessary to enable him to perform the duties imposed upon him by the provision of this chapter." C.G.S.A. S 31-278. He has the power to conduct hearings, which are governed by C.G.S.A. S 31-298. The hearings are of an adversary nature, conducted in accordance with the rules of equity, and the Commissioner has the authority to proceed "in a manner best calculated to ascertain the substantial rights of the parties and carry out the

provisions and intent of this chapter." C.G.S.A. S 31-298. All testimony is recorded. Either party has a right to appeal. C.G.S.A. S 31-301.

Persons performing adjudicatory functions in administrative agencies enjoy absolute immunity from liability for damages for their judicial acts. Butz v. Economou, 438 U.S. 478, 512 (1978). "[A]dministration within a[n] . . . administrative agency shares enough of the characteristics of the judicial process that those who participate in such adjudications should also be immune from suits for damages." 438 U.S. at 512. Thus, Commissioner Mastropietro's rulings concerning Plaintiff's entitlement to workers' compensation benefits were acts within his capacity as Commissioner, and thus, were "judicial acts." See Messa v. Foley, 1993 WL 106519 (E.D. Pa. April 9, 1993). Accordingly, Commissioner has absolute immunity with respect to those acts. Similarly, his decision about whether to hold an emergency hearing was a judicial act entitled to absolute immunity. See Massa v. Folly, No. CIV. 92-1887, 1993 W 106519 (E.D. Pa. Apr. 9,

1993). As to Plaintiff's claims against the Commissioner for his alleged miscalculation of Plaintiff's benefits and his recommending that Plaintiff seek certain jobs,[13] these claims relate to acts of the Commissioner that clearly were within the scope of his duties and he is at least entitled to qualified immunity as to those acts.[14]

In a section 1983 action, qualified immunity shields an official sued in his individual capacity "from liability for civil damages insofar as [his] conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), or, even, where the rights were clearly established, if it was objectively reasonable for the

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[13] It is unclear from Plaintiff's Amended Complaint exactly in what context these acts were taken --- whether as part of a ruling or otherwise. Were we to have more facts, it is conceivable that these acts are entitled to absolute immunity. For purposes of this decision we need not go that far.

[14] The state court judge in Gyadu, supra, ruled that the calculation of benefits was an "order or decision" of the Commissioner under section 31-301(a), C.G.S.A., that was subject to administrative review.

official to believe that his acts did not violate those rights. Anderson v. Creighton, 483 U.S. 635, 638 (1987); see also Jermosen v. Smith, 945 F.2d 547, 550 (2d Cir. 1991), cert. denied, 503 U.S. 962 (1992).

Nothing is alleged that would indicate that Commissioner Mastropietro's conduct violated clearly established rights. If anything, Plaintiff's Amended Complaint alleges that Commissioner Mastropietro was acting in accordance with the Workers' Compensation Act. Thus, we find that he is entitled to qualified immunity with respect to the specific acts alleged against him by Plaintiff.

b. Plaintiff's Failure to State a Claim Under Section 1983

Furthermore, to properly state a claim under section 1983, Plaintiff must allege that (1) he was deprived of a right secured by the Constitution and laws of the United States; and (2) the deprivation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). As the Supreme Court has repeatedly held, "section

1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." Albright v. Oliver, 510 U.S. 266 (1994). Matters formerly within the exclusive cognizance of the states do not, by virtue of this

section, necessarily become matters of national concern. Snowden v. Hughes, 321 U.S. 1, 11 (1944).[15]

Plaintiff alleges that Defendants' actions which "gave their blessing" to the insurance carrier's withholding of his weekly section 308a, C.G.S.A. S 31-308a, benefits prior to a hearing denied him due process; that their denial of section 308 benefits, C.G.S.A. S 31-308, to him during his search for a job deprived him of "Equal Protection as well as Income

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[15] Indeed, to the extent that Plaintiff's Amended Complaint could be read to allege a violation of state law by Defendants, even that conduct would not give rise to a cause of action under section 1983. Oberlander v. Perales, 740 F.2d 116 (2d Cir. 1984). Williams v. Treen, 671 F.2d 892 (5th Cir. 1982), cert. denied, 459 U.S. 1126 (1983). Nor would Plaintiff's challenge of an allegedly erroneous determination by a state agency charged with enforcement of state law present a substantial federal question that would be encompassed by section 1983. See Stenson v. State of New York, 422 F. Supp. 38 (S.D.N.Y. 1976).

Security" and violated his right to due process; and that their denial of a dependency allowance to him to care for his late sister's children denied him due process and subjected Plaintiff to "gross discrimination and a loss of Income Security."

As to the last claim, Plaintiff has an administrative appeal pending, and, therefore, this claim is not ripe for review by any court. See Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967). As to his claims that the denial of section 308 benefits, C.G.S.A. S 31-308, violated his Equal Protection rights, Plaintiff has failed to allege membership in a constitutionally protected suspect or quasi-suspect group. See Phillips v. Ford Motor Co., 83 F.3d 235, 241 (8th Cir. 1996). As best we can discern from his Amended Complaint, Plaintiff is complaining that he has been discriminated against on the basis of his pre-injury income, which was higher than the average used for purposes of calculating workers' compensation benefits. Plaintiff alleges no other basis for the alleged discrimination. It is difficult to understand how former membership in this higher income group could in any way

affect whether he received section 308 benefits. Nevertheless, we find that Plaintiff has failed to state a claim under section 1983 based on an alleged violation of his rights under the Equal Protection Clause.

Because Plaintiff has not alleged membership in a constitutionally protected group, equal protection concerns will be satisfied so long as the classification is rationally related to a legitimate state interest. City of New Orleans v. Dukes, 427 U.S. 297 (1976). The courts have repeatedly held that the states have a legitimate interest in controlling the costs of the workers' compensation system. See, e.g., Veronie v. Garcia, 878 F.2d 347 (10th Cir. 1989); Fisher v. Reiser, 610 F.2d 629 (9th Cir. 1979), cert. denied, 447 U.S. 930 (1980); Chiropractors for Justice v. Alaska, 895 P.2d 962 (Alaska 1995). The constitutional violation alleged by Plaintiff relates to actions taken by Defendants in accordance with the State workers' compensation system and the statutes that regulate the payment of benefits. As discussed more fully below, we find this statutory scheme withstands an equal

protection challenge on the ground that it is rationally related to the State's legitimate interest in regulating the costs of workers' compensation. Thus, we find that there is no set of facts that Plaintiff will be able to prove at trial that will support these vague, generalized allegations of an equal protection violation, so as to state a cause of action under section 1983.

With respect to his claim that the suspension of his section 308a benefits, C.G.S.A. S 31-308a, prior to a hearing deprived him of due process, we first question whether there has been a sufficient allegation of a deprivation by someone acting under color of state law to state a claim under section 1983. It was that insurance carrier, not the Commissioner, that discontinued his benefits prior to a hearing. There is nothing to indicate that the Commission or Commissioner participated in this decision to terminate his benefits. See Cryder v. Oxendine, 24 F.3d 175 (11th Cir. 1994). His obscure allegations that Defendants somehow gave their

"blessing" to this action does not allege action under color of state law.

Further, as discussed more fully below, we find that the post-deprivation hearing afforded Plaintiff, as well as the administrative appeals process which Plaintiff refused to pursue, satisfy the due process requirements. Thus, we find no grounds upon which a constitutional claim could stand under the facts alleged in the Amended Complaint.

Accordingly, we find that Plaintiff has failed to allege a claim under section 1983 upon which relief may be granted. Additionally, because of the Commissioner's absolute and qualified immunity from liability in his individual capacity, we dismiss Plaintiff's claims for money damages against Defendant Mastropietro in his individual capacity.

III. Plaintiff's Constitutional Challenges to the Connecticut Workers' Compensation Act

Last, we consider Plaintiff's challenges to the constitutionality of various provisions of the Connecticut's Workers' Compensation Act.

A. The Maximum Weekly Benefit Cap, C.G.S.A. S 31-309

As noted above, Plaintiff challenges the maximum weekly benefits cap, set forth in C.G.S.A. S 31-309, on equal protection grounds. Plaintiff asserts that it discriminates against him and others like him who were high income wage earners at the time of their injuries, earning in excess of the average weekly wages used for purposes of calculating the maximum cap on weekly benefits.

A violation of the Equal Protection Clause may occur when a state enacts a law that has a special impact on less than all the persons subject to its jurisdiction. New York City Transit Auth. v. Beazer, 440 U.S. 568, 587 (1979). However, the Fourteenth Amendment does not deny to the state the power to treat different classes of person in different ways. Reed v. Reed, 404 U.S. 71, 75 (1971). If the groups are similarly situated, the legislation will be presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. City of

Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985). If, however, the classification, a strict scrutiny analysis replaces the general rule or presumed validity.

An individual's high income does not place him or her in a constitutionally protected group. Therefore, where, as here, the classification created by the maximum cap on weekly benefits neither trammels a fundamental right nor burdens a suspect class, equal protection concerns will be satisfied if the classification is rationally related to a legitimate state interest. See City of New Orleans v. Dukes, 427 U.S. 297 (1976) Giannattasio v. Stamford Youth Hockey Ass'n, Inc., 621 F. Supp. 825, 829 (D. Conn. 1985). The classification in this case clearly meets this standard, for the State has a legitimate interest in controlling costs to employers of workers' compensation system. See, e.g., Veronie, supra; Fisher v. Reiser, supra. As the Supreme Court held in Vance v. Bradley, 440 U.S. 93 (1979), a statute that does not burden a suspect class or a fundamental interest should not be overturned "unless the varying treatment of different groups

or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." Id. at 97. In light of our conclusion that the State has a legitimate interest in regulating the costs of the workers' compensation system to employers, we cannot conclude that it is irrational for the statute to place a cap on the maximum weekly benefits to be paid to compensation claimants. See Texas Workers' Compensation Comm'n v. Garcia, 893 S.W. 2d 504, 531 (Tex. S. Ct. 1995).

B. The Termination of Section 308a Benefits Prior to a Hearing

Plaintiff complains that the statutory provisions that allow a workers' compensation carrier to terminate section 308a benefits, C.G.S.A. S 31-308a, prior to a hearing violates the due process clause. We disagree. As the Eleventh Circuit held in Cryder v. Oxendine, supra, "[d]ue process is a flexible concept that varies with the particular situation." 24 F.3d at 177. And, while the Supreme Court has held that due process

requires a hearing before the termination of basic welfare benefits, Goldberg v. Kelly, 397 U.S. 254 (1970), in Mathews v. Eldridge, 424 U.S. 319 (1976), the Supreme Court upheld a system which afforded an individual no right to a hearing until after disability payments had been terminated against due process challenges.

As with my social security disability benefits, Plaintiff's eligibility for section 308a benefits is based on factors other than financial need. Plaintiff does not challenge the sufficiency of the notice that he received. He is primarily upset by the fact that the termination of these benefits by the insurance carrier occurred prior to the hearing. We believe that the post-termination hearing, which in this case took place two weeks after the termination of benefits, and the appellate remedies afforded by sections 31-301 and 31-301b, of which Plaintiff has not availed himself, satisfactorily comport with the dictates of due process. See Campo v. New York City Employees Retirement System, 843 F.2d 96 (2d Cir.) (due process did not require predeprivation hearing for failure to

pay survivor benefits), cert. denied, 488 U.S. 889 (1988); Johnson v. Cohen, 836 F.2d 798 (3d Cir. 1987) (child eligible for Aid to Families with Dependent Children not entitled to predeprivation hearing before he was required to assign benefits to state welfare agency); Signet Constr. Corp. v. Borg, 775 F.2d 486 (2d Cir. 1985) (due process did not require predeprivation hearing before city board withheld contract payments); Al-Charles, Inc. v. Heintz, 620 F. Supp. 327 (D. Conn. 1985).

C. The Law Which Denied Plaintiff Section 31-308 Benefits While He Was Looking for Employment and Required Him Instead To Exhaust the Specific Award for His Permanent Partial Disability

To state a due process claim, Plaintiff must allege that he had a protectible property interest in receiving section 31-308 benefits. See Ortwein v. Schwab, 410 U.S. 656 (1973); Jovanovich v. Sweeney, 12 F.3d 1106 (9th Cir. 1993); Fisher v. Reiser, 610 F.2d 629, 636 (9th Cir. 1979) (denial of supplemental benefits not based on necessity does

not implicate the same constitutional concerns as denial of the benefit for basic subsistence), cert. denied, 447 U.S. 930 (1980). Plaintiff alleges that these benefits were terminated after his physician released him to look for a job within his physical capabilities. It appears that Plaintiff had reached the statutory maximum period for the payment of benefits. In either event, there is nothing to indicate that Plaintiff had a protectible property interest in receiving section 308 benefits during the time that he was looking for a job, as opposed to a lump sum award, which he received for his permanent partial disability.

D. The Informal Hearing Process

The Supreme Court in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), held that the right to use state adjudicatory procedures is a constitutionally protected property interest. Since the Connecticut's Workers' Compensation Act establishes a comprehensive scheme for adjudicating workers' compensation claims, Logan makes it clear that Plaintiff's right to seek redress for his workers'

compensation claim using Connecticut's adjudicatory procedures is a constitutionally protected interest. Thus, the question presented to this Court, like the Supreme Court in Logan, is what process is due to Plaintiff. Logan emphasizes that the due process clause requires "an opportunity . . . granted at a meaningful time and in a meaningful manner, for [a] hearing appropriate to the nature of the case." Id. at 437.

In this case, however, although Plaintiff alleges in the vaguest of terms that he was denied procedural due process by virtue of the informal hearing process, Plaintiff has failed to avail himself of the procedural protections afforded by Connecticut's Workers' Compensation Act. The Compensation Act establishes an administrative procedure for the review of decisions of the Commissioner. Plaintiff could have appealed this decision to the Compensation Review Board pursuant to section 31-301. This he has not done, choosing instead to file this lawsuit in federal court. Thus, the alleged deprivation could not have occurred as a result of some established state procedure, since Plaintiff chose not to

follow established state procedures. Parratt v. Taylor, 451 U.S. 527 (1981). Paskaly v. Seale, 506 F.2d 1209, 1212 (9th Cir. 1974). Additionally, the mere assertion that state remedies are lengthy (Plaintiff complains about the length of the administrative appeals process) will not render state remedies inadequate unless they are "inadequate to the point that [they are] meaningless or nonexistent." Easter House v. Felder, 910 F.2d 1387, 1406 (7th Cir. 1990) (en banc), cert. denied, 111 S. Ct. 783 (1991).

E. The Exclusive Remedy Provision

Last, Plaintiff challenges the exclusive remedy provision of Connecticut's Workers' Compensation Act, C.G.S.A. S 31-284. It is unclear from Plaintiff's Amended Complaint how he has been adversely affected by this statute, and, thus, whether he has standing to assert this challenge. It would seem that any claim that he would have had against his employer would have arisen from his 1986 injury, and presumably would be barred by the applicable statute of

limitations. Nevertheless, we address the constitutional issue raised by Plaintiff.

In Northern Pac. Ry. Co. v. Meese, 239 U.S. 614 (1916), the Supreme Court summarily dismissed an equal protection challenge to a workers' compensation statute. And in New York Central R.R. Co. v. White, 243 U.S. 188 (1917), the Supreme Court upheld that state's authority to establish by legislation departures from common-law rules affecting an employer's liability for an employee's personal injuries. 243 U.S. at 200. Since then, numerous courts have upheld the constitutionality of exclusive remedy clauses in state workers' compensation statutes. See Davidson v. Hobart Corp., 643 F.2d 1386 (10th Cir. 1981); Lusson v. Carter, 704 F.2d 646 (1st Cir. 1983); King v. Williams Industries, Inc.u, 724 F.2d 240 (1st Cir. 1984), cert. denied, 466 U.S. 980 (1984); Garcia v. American Airlines, 816 F. Supp. 72 (D.P.R.), aff'd 12 F.3d 308 (1st Cir. 1993). We agree and find no due process or equal protection problems arising from the

exclusive remedy provisions of Connecticut's Workers' Compensation Act.

CONCLUSION

Therefore, for the reasons set forth above, we grant Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. #16) in its entirety.

SO ORDERED.

Dated: **June 24, 1996.**
Bridgeport, Connecticut.

GERARD L. GOETTEL
U.S.D.J.

CTDC (nhct)

96-cv-43

Goettel, DJ

Exhibit #4

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

As a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of November, one thousand nine hundred and ninety-seven.

PRESENT:

Hon. Wilfred Feinberg,
Hon. Richard J. Cardamone,
Hon. John M. Walker, Jr.,
Circuit Judges.

BEN GYADU,

Plaintiff-Appellant,

v. **Nos. 96-7950**
96-9616

WORKERS' COMPENSATION COMMISSION, WORKERS' REHABILITATION COMMISSION, and JOHN A. MASTROPIETRO, COMMISSIONER,

Defendants-Appellees.

APPEARING FOR PLAINTIFF-APPELLANT: **Ben Gyadu, Pro Se, Waterbury, Connecticut**

APPEARING FOR DEFENDANTS-APPELLEES: **Donna Hixon-Smith, Assistant Attorney General, Hartford, Connecticut**

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United State District Court for the District of Connecticut (Goettel, J.), and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Judgment of the district court be and it hereby is affirmed.

Plaintiff-appellant Ben Gyadu ("Gyadu") appeals from the judgment of the district court on June 24, 1996 dismissing Gyadu's complaint against defendants-appellees Workers' Compensation Commission, Workers' Rehabilitation

Commission, and John A. Mastropietro, Commissioner ("Mastropietro"), which alleged various claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000(e) et seq. and 42 U.S.C. S 1983. See Gyadu v. Workers' Compensation Comm'n, 930 F. Supp. 738 (D. Ct. 1996). With the exception of the "due process claim concerning [Gyadu's] administrative appeal of the dependency allowance," this court on January 29, 1997 granted a motion to dismiss all of Gyadu's claims as frivolous.

Gyadu's due process claim arose as follows: following a job-related injury in 1986, Gyadu petitioned before the Connecticut Workers' Compensation Commissioner for the Fifth District ("Fifth District") for a dependency allowance to provide for his deceased sister's children. On May 5, 1995, the Fifth District denied Gyadu's dependency allowance on the ground that the Connecticut Workers' Compensation statute covers only "children and stepchildren" not nieces or nephews. Gyadu appealed the Commissioner's decision to the Compensation Review Board ("CRB"). In January 1996, with his appeal still pending before the CRB, Gyadu brought the current action in federal district court, alleging, inter alia, that the Board's delay in hearing his appeal violated his procedural due process rights. On May 2, 1997, the Board heard and dismissed Gyadu's dependency allowance appeal on the merits.

As a preliminary matter, the Eleventh Amendment bars this court from hearing Gyadu's action against the Workers' Compensation Commission, a state agency. See Edelman v. Jordan, 415 U.S. 651, 663 (1974). To the extent Gyadu seeks damages from Commissioner Mastropietro in his official capacity, the Eleventh Amendment also bars his claim. Id. We note further that the "Workers' Rehabilitation Commission," named as a defendant in "Workers' Rehabilitation Commission," named as a defendant in this action, appears not to exist. See Gyadu, 930 F. Supp. at 747 n. 11. Gyadu has served no such entity; no such entity has

appeared as a defendant; and we therefore affirm the district court's dismissal of Gyadu's complaint as to it.

In addition, it is unclear whether Gyadu has in his brief even preserved his right to appeal the district court's denial of his due process claim. See LoSacco v. City of Middletown, 71 F.3d 88, 92 (2d Cir. 1995); Fed. R. App. P. 28(a)(6) (the appellant's brief "must contain the contentions of the appellant on the issues presented.").

In any event, Gyadu's claim must be dismissed. Because the CRB has now heard Gyadu's dependency allowance claim, Gyadu's procedural due process claim for injunctive relief is moot. See, e.g., Murphy v. Hunt, 455 U.S. 478, 480-481 (1982) (case moot where parties no longer have legally cognizable interest in outcome). As stated, the Eleventh Amendment bars Gyadu's damages claim for the alleged due process violation. Even if Gyadu's claim were not so barred, Gyadu has not stated a valid cause of action under the Due Process Clause. "[T]he mere assertion that state remedies are lengthy . . . will not render state remedies inadequate [under the Due Process Clause] unless they are 'inadequate to the point that [they are] meaningless or nonexistent.'" Gyadu, 930 F. Supp. at 752, quoting Easter House v. Felder, 910 F.2d 1387, 1406 (7th Cir. 1990) (en banc).

Finally, we note Gyadu's argument that the workers' compensation statute was clearly intended to provide for dependents, which Gyadu says his sister's children are. He argues that Ghanaian law recognizes his responsibility for these children and that it is unfair (and presumably a constitutional violation) for this statute not to recognize it. We cannot agree with Gyadu that the statute provides for his deceased sister's children. Even if Gyadu were correct that under Ghanaian law he is responsible for the children, the limitation in Connecticut's workers' compensation statute is for payments only for children or step-children. This limitation is not unreasonable. Because at the time of Gyadu's

work-related injury Gyadu's nephews were not children or step children as defined by Connecticut law, Gyadu cannot claim entitlement to a dependency allowance.

We have carefully considered Gyadu's remaining arguments and find them to be without merit. Accordingly, we affirm the judgment of the district court.

FOR THE COURT:

GEORGE LANGE III, Clerk
by: Lucille Carr, Deputy Clerk